IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.4964 OF 2006
IN
F.A.NO.377 OF 2006

Jagdish Rama Kadu and Anr. ..Applicants

Vs.

The Government of Maharashtra
& Ors. ..Respondents

Mr.S.G.Surana counsel for applicants
Mr.S.N.Gawade AGP for respondents

CORAM: S.B.MHASE &
SMT.V.K.TAHILRAMANI,JJ.

DATE : JANUARY 09, 2007

P.C.

1. Heard both sides.

2. This civil application is for withdrawal of the amount of compensation deposited by the respondent-State before the Reference Court in Special Darkhast No.78 of 2005. The land of the applicants has been acquired. Thereafter, the Reference was heard and decided and that order of the Reference is challenged before this Court by

filing the aforesaid appeal. The appeal was admitted and interim stay was granted on condition of deposit of the amount. However, as the amount was not deposited, the stay was vacated. Thereafter, Execution Petition was filed and in Execution Petition, the amount has been deposited. Thereafter, on the date when the amount was deposited, there was no stay from this Court and the Executing Court should have released the amount. However, surprisingly enough, the Executing Court refused to release the amount simply because, the appeal is pending when it is clear that there was no stay for execution. Let the facts as it is. The learned counsel for the respondents has vehemently opposed for release of the amount. However, in the facts and circumstances, we find that the following order is appropriate:-

3. We direct the Executing Court to release 50% amount deposited in Special Darkhast No.78 of 2005. Remaining 50% amount may be disbursed in favour of the applicants on furnishing Bank Guarantee. Civil Application is disposed of.

[SMT.V.K.TAHILRAMANI, J.] [S.B.MHASE, J.]